

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	8:12CR271-1
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
PAUL ROSBERG,)	
)	
Defendant.)	
)	

Defendant, Paul Rosberg (Rosberg), has filed a notice of appeal (filing [304](#)) from the memorandum and order (filing [288](#)) and judgment (filing [289](#)) entered by the court on May 9, 2014, which denied and dismissed with prejudice Rosberg's motion to vacate under 28 U.S.C. § 2255 (filing [286](#)). In response to the notice of appeal, the clerk's office has issued a memo to the undersigned (filing [305](#)) inquiring (1) whether Rosberg will be allowed to proceed in forma pauperis on appeal and (2) whether the court will issue a certificate of appealability. The answer to both questions is "No."

Although Rosberg was represented by court-appointed counsel, the presentence investigation report revealed that he has substantial assets. As noted in the court's May 9th memorandum and order, "Rosberg owned five bank accounts, a 720 acre farm, 4.5 acres in another county, four pickup trucks, three cars, one sem[i]-truck, [and] one grain truck, and ... he had at least \$15,000 of cash on hand." (Filing 288 at 2, n. 2). "Rosberg [also] admitted to owning cattle and having grain on hand but refused to estimate the number or value of these commodities or the value of any of his other tangible or intangible assets." (*Id.*) At sentencing, the court required Rosberg to pay a fine, reimburse the Criminal Justice Act, and pay the lawyer's fees for witnesses who had been wrongly sued by Rosberg. The court therefore finds that Rosberg is able to pay the costs of appeal without undue hardship.

Furthermore, in his plea agreement Rosberg waived his right to seek post-conviction relief, and none of the arguments raised in his § 2255 motion fall within the exceptions to that waiver. Thus, the appeal is not taken in good faith.

In the court's May 9th memorandum and order, it was also determined that no certificate of appealability will be issued. That determination has not changed.

Accordingly,

IT IS ORDERED, in response to the clerk's memo (filing [305](#)), that:

- (1) Defendant shall not be allowed to proceed in forma pauperis on appeal;
- (2) Pursuant to Fed. R. App. P. 24(a)(3)(A), the court hereby certifies that the appeal is not taken in good faith and that Defendant is not entitled to proceed in forma pauperis because he has the financial ability to pay the costs of appeal without undue hardship;
- (3) The clerk shall provide notice to the parties and the Court of Appeals pursuant to Fed. R. App. P. 24(a)(4); and
- (4) No certificate of appealability will be issued.

DATED this 8th day of July, 2014.

BY THE COURT:

s/ Richard G. Kopf

Senior United States District Judge